



EVALUATION TERMS OF SERVICE

These EVALUATION TERMS OF SERVICE (“**Terms**”) are made by and between Cyborg Security, Inc., located at 801 International Parkway, Suite 500, Lake Mary, FL 32746 (“**Cyborg**”) and Customer (as defined below). These Terms will come into effect upon Customer first logging in to Cyborg’s website via the link provided in the Welcome Email (as defined below) (the “**Effective Date**”). By logging in to Cyborg’s website, Customer acknowledges and agrees that Customer has fully reviewed and agrees to be bound by these Terms.

1. DEFINITIONS. All capitalized terms not defined in this Section 1 shall have the meanings set forth in the Sections in which they are defined.

1.1 “**Access Level**” means the access level configured by Cyborg which defines the portion(s) of the Content Platform and type(s) of Content that Customer may access during the Trial Period.

1.2 “**Affiliate**” means a business entity now or hereafter controlled by, controlling or under common control with a party.

1.3 “**Aggregated and Anonymized Data**” means any information that (a) does not identify Customer or any of its users and (b) is aggregated for statistical, analytical or other business purposes of Cyborg or its Affiliates. Aggregated and Anonymized Data is not Customer Data or Confidential Information of Customer.

1.4 “**Confidential Information**” means these Terms and all data, trade secrets, business information, proprietary and other information of any kind and in whatever form or however it may be marked or denominated, including data developed or produced through access to Confidential Information, that a party (the “**Discloser**”) discloses, in any medium, or otherwise provides access to, the other party (the “**Recipient**”). All information concerning or embedded in the Services, including the Content Platform and all Content, is Cyborg’s Confidential Information, except Customer Data, which is Customer’s Confidential Information.

1.5 “**Content**” means the data, reports, documentation, analysis tools, research, and other information hosted on the Content Platform and made available to Customer during the Trial Period pursuant to these Terms, as well as all derivatives of the foregoing.

1.6 “**Content Platform**” means the platform that is made available via the Internet to Customer for evaluation purposes during the Trial Period, pursuant to these Terms. For avoidance of doubt, the Content Platform is not installed at an installation site owned or operated by or on behalf of Customer.

1.7 “**Customer**” means the entity identified in the Welcome Email.

1.8 “**Customer Data**” means the electronic data, information, and materials submitted by Customer via the Services.

1.9 “**Intellectual Property Rights**” means all intellectual property rights throughout the world, including, without limitation, copyrights, patents, trademarks, trade secrets, know how, authors’ rights, rights of attribution, and other proprietary rights, and all applications and rights to apply for registration or protection of such rights.

1.10 “**Services**” means Cyborg’s provision of the Content and Content Platform.

1.11 “**Trial Period**” the period beginning on the Effective Date and lasting for the length of time set forth in the Welcome Email unless earlier terminated pursuant to the terms set forth herein, including for Customer’s unauthorized disclosure of the Content or the Content Platform to a third-party as set forth in Section 3.1. If no time period is specified in a Welcome Email, then the Trial Period shall be for thirty (30) days following the Effective Date.

1.12 “**Welcome Email**” means the email sent by Cyborg to Customer inviting Customer to participate in a trial subscription of the Content Platform.

2. LICENSE; SERVICES.

2.1 Content Platform. With respect to the Content Platform, and subject to these Terms, Cyborg grants to Customer an unpaid, non-exclusive license to access and use the Content Platform during the Trial Period, at the Access Level, and solely for Customer’s internal evaluation of the Content and Content Platform (the “**Purpose**”). Customer’s rights granted in this Section 2.1 are nontransferable and non-sublicensable.

2.2 Hosting of Content Platform. During the Trial Period, Cyborg will host the Content Platform and make the Content Platform and Content available to Customer via the Internet in accordance with these Terms. Cyborg may modify the Services and Content Platform at any time in its sole discretion. During the Trial Period, Customer grants to Cyborg a non-exclusive license to use the Customer Data as reasonably necessary for Cyborg to fulfill Cyborg’s duties under these Terms. As between Cyborg and Customer, Customer owns its Customer Data.

2.3 Content License. With respect to the Content during the Trial Period (and thereafter to the extent expressly permitted in Section 4.3), Cyborg grants to Customer a non-exclusive and limited license to use and reproduce the Content, at the Access Level, solely for the Purpose, and subject to any additional restrictions set forth in the Welcome Email, without the right to distribute or disclose such Content to any person or entity other than as expressly permitted herein.

2.4 Customer’s Representatives. Customer may permit its employees, officers, directors, or agents (“**Representatives**”) to use the Content Platform and Content, provided that Customer shall ensure its Representatives’ use of the Content and Content Platform is consistent with the applicable Access Level and Purpose and otherwise complies with these Terms. Customer shall remain liable for the actions or omissions of its Representatives in breach of these Terms.

2.5 Customer’s Account. The license granted to Customer permits Customer to utilize a single organizational account that can access the Content Platform and create separate user accounts for individual users employed by Customer. Each user account shall have unique login credentials. Individual users shall not share their respective login credentials. The number of user accounts may not exceed any limits set forth in the Welcome Email or the Content Platform.

3. RESTRICTIONS; RESERVATION OF RIGHTS.

3.1 **Restrictions.** As between Cyborg and Customer, title to and ownership of the Content Platform and the Content shall remain with Cyborg. **CUSTOMER IS EXPRESSLY PROHIBITED FROM DISCLOSING, SHARING, TRANSFERRING, SUMMARIZING, OR OTHERWISE MAKING THE CONTENT OR THE CONTENT PLATFORM AVAILABLE TO A THIRD-PARTY, AND ANY SUCH DISCLOSURE SHALL BE AN IMMEDIATE BREACH OF THESE TERMS (INCLUDING THE LICENSES GRANTED IN SECTIONS 2.1 AND 2.2).** Without limiting the other restrictions contained herein, Customer shall not: reverse engineer, reverse compile or disassemble any part of the Services, the Content Platform, or the Content; modify or create any derivative works based on the Content Platform or Content; frame or mirror any content forming part of the Services, the Content Platform, or Content; access or use the Services, Content Platform or Content in order to build any commercially available or otherwise competing product or service; use the Services, Content Platform, or Content to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious act to disrupt the security, integrity or operation of the Services, Content Platform, or Content; use the Services, Content Platform, or Content in violation of any applicable law; use the Content Platform or Content in a manner inconsistent with the Access Level or Purpose; or disclose any Content to any person or entity other than as permitted hereunder to Customer's Representatives.

3.2 **Reservation of Rights.** Under no circumstances will Customer assert, contend, represent or state to any third party that the Content Platform, Content, or the Services are owned by any party other than Cyborg. Subject to the limited rights expressly granted hereunder, Cyborg reserves all rights, title and interest in and to the Content Platform, Content, and Services, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Cyborg may use, without restriction, all suggestions, improvements and ideas concerning any part of the Content Platform or Services that may be communicated to Cyborg by Customer.

3.3 **Suspension.** Cyborg shall have the right to immediately suspend Customer's access and use of the Content Platform, Content, and Services if Customer or its Representatives are using or accessing the Services, Content Platform, or Content in violation of these Terms or in any manner causing material harm to the Services, Content Platform, or Content.

4. TERM AND TERMINATION.

4.1 **Term.** These Terms shall be in effect from the Effective Date until the end of the Trial Period.

4.2 **Termination.** If either party materially breaches any obligation hereunder and fails to remedy such breach within 30 days of receipt of written notice of such breach, the other party may terminate these Terms. Cyborg may also terminate these Terms immediately in the event Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Cyborg may terminate these Terms without cause by providing thirty (30) days' prior written notice to Customer.

4.3 **Obligations Upon Termination.** Upon termination or expiration of these Terms, Customer and its Representatives will discontinue further use of the Content Platform and Services, unless Cyborg and Customer have executed a separate agreement permitting continued use thereof. Following the expiration or termination of these Terms (but excluding any termination by Cyborg pursuant to the first sentence of [Section 4.2](#)), Customer may continue to use, subject to the provisions of these Terms, any Content that Customer has downloaded during the Trial Period.

4.4 **Other Remedies.** Termination of these Terms will be without prejudice to either party pursuing any other remedies available to such party. Without limiting any other remedies available to Cyborg, in the event of misuse or threatened misuse by Customer of the Content Platform, Content or Services, Customer agrees that Cyborg shall be entitled to immediate and permanent injunctive relief from a court of competent jurisdiction without posting of a bond or other security.

5. **DISCLAIMER OF WARRANTIES.** THE CONTENT AND THE CONTENT PLATFORM ARE PROVIDED ON AN AS-IS BASIS, AND CYBORG MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THESE TERMS, THE SERVICES, THE CONTENT PLATFORM, THE CONTENT, OR ANY OTHER PRODUCT OR SERVICE PROVIDED UNDER THESE TERMS. CYBORG DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CYBORG CANNOT GUARANTEE THAT THE PROVISION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS CAN OR WILL BE CORRECTED. CYBORG DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF THE CONTENT. CUSTOMER IS RESPONSIBLE FOR EVALUATING THE SUITABILITY OF THE CONTENT, AND CYBORG SHALL HAVE NO LIABILITY ARISING FROM CUSTOMER'S RELIANCE ON THE CONTENT.

6. CONFIDENTIALITY.

6.1 **Use and Disclosure of Confidential Information.** Each of the parties, as Recipient, agrees that it will not, and will cause its Representatives and Affiliates to not, disclose Confidential Information of the other party during or after the term of these Terms, other than on a "need to know" basis, and then only: (a) to Recipient's employees, officers, or directors; (b) to Affiliates of Recipient (provided Recipient ensures that such Affiliate maintains the confidentiality of such disclosed Confidential Information); and (c) to the independent contractors, agents, and consultants of Recipient (provided that such persons are subject to a written confidentiality agreement no less restrictive than the terms herein). Unless otherwise authorized by these Terms, Recipient shall not use Confidential Information of the Discloser for any purpose other than to carry out these Terms. Recipient shall treat Confidential Information of the Discloser with no less care than it employs for its own Confidential Information of a similar nature that it does not wish to disclose, publish or disseminate, but in no event less than a commercially reasonable degree of care. Upon expiration or termination of these Terms for any reason, Recipient shall promptly return or destroy all of Discloser's Confidential Information and data in the possession of Recipient, subject to and in accordance with these Terms. Recipient shall have the right to retain a copy of Confidential Information of Discloser only to the extent required for legal, regulatory, or other governmental compliance purposes, provided that such retention is in accordance with these Terms. To the extent legally permitted, Recipient shall notify Discloser of any actual or threatened requirement of law to disclose Confidential Information promptly upon receiving actual knowledge thereof and shall cooperate with Discloser's reasonable, lawful efforts to resist, limit or delay disclosure.

6.2 Exclusions. The obligations of confidentiality in this Section 6 shall not apply to any information that (a) Recipient rightfully has in its possession when disclosed to it, free of any obligation to Discloser to maintain its confidentiality; (b) Recipient independently develops without access to Discloser's Confidential Information; (c) is or becomes known to the public other than by breach of this Section 6; or (d) is rightfully received by Recipient from a third party without an obligation of confidentiality to the Discloser. Any combination of Confidential Information disclosed with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.

6.3 Use of Aggregated and Anonymized Data. Customer agrees that Cyborg may collect, use, and disclose Aggregated and Anonymized Data derived from the use of the Services for business purposes.

7. LIMITATION OF LIABILITY

7.1 Consequential Damages. EXCEPT AS SET FORTH IN THIS SECTION 7.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This Section 7.1 shall not apply to or limit Customer's (a) liability for its gross negligence, willful misconduct, or fraud; (b) breach of its obligations under Section 6 (Confidentiality); or (c) use of the Content or Content Platform in violation of these Terms, including the unauthorized disclosure of the Content or the Content Platform to a third-party.

7.2 Liability Cap. THE TOTAL LIABILITY OF CYBORG AND ITS AFFILIATES UNDER THESE TERMS SHALL NOT EXCEED ONE THOUSAND DOLLARS (\$1,000.00).

8. MISCELLANEOUS

8.1 General. No agency, partnership, employment, or joint venture relationship exists between the parties as a result of these Terms or the activities contemplated by the parties hereunder. Customer may not assign or otherwise transfer any of its rights or obligations under these Terms and any attempt at such assignment shall be void; Cyborg may freely assign these Terms. These Terms shall be governed by and construed under the laws of Delaware, excluding its conflict of laws rules. Section headings are included for reference only and shall not affect the construction or interpretation of these Terms. If any provision of these Terms is held to be unenforceable, the parties shall amend such provision to reflect, as nearly as possible, the intentions of the parties, and the remaining provisions of these Terms shall remain in full force and effect. The delay or failure of either party to enforce any right, remedy or provision of these Terms shall not operate to limit, impair, preclude, cancel, waive or otherwise affect such right, remedy or provision unless otherwise agreed in writing, and any waiver by either party of any provision of these Terms shall not imply a subsequent waiver of that or any other provision of these Terms. The parties acknowledge that they were each given an equal opportunity to negotiate these Terms and agree that the identity of the drafter of these Terms is not relevant to its interpretation. The word "including", when used in these Terms, shall mean "including, without limitation". These Terms and any other documents incorporated herein by reference comprise the final, full and exclusive agreement between the parties and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral, between the parties regarding the subject matter hereof. The parties agree to accept a digital image of these Terms as executed as a true and correct original, admissible as best evidence to the extent permitted by a court of competent jurisdiction. These Terms are not intended to and shall not be construed to give any third party (including any customer of Customer) any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained in or contemplated by these Terms.

8.2 Dispute Resolution. At the option of either party, a dispute arising in connection with these Terms shall be submitted to arbitration; provided, however, that claims for equitable relief, including injunctive relief shall be brought in a court of competent jurisdiction, subject to the choice of law provisions in Section 8.1. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes of the American Arbitration Association ("AAA"), as modified by this Section 8.2. Any hearing (if any) must take place in a location to be mutually agreed by the parties, and if no agreement can be reached within thirty (30) days, New Castle County, Delaware. The arbitrator's ruling is binding and may be entered as a judgment in any court of competent jurisdiction. In the event this agreement to arbitrate is held unenforceable by a court, then the disputes that would otherwise have been arbitrated shall be exclusively brought in the state or federal courts located in New Castle County, Delaware. Claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret rights or claims for injunctive or equitable relief shall be brought in any state and federal courts of competent jurisdiction.

8.2 Force Majeure. Cyborg shall not be liable for any failure or delay in performance under these Terms due to circumstances beyond its reasonable control, including acts of war, terrorist acts, natural disasters, pandemics, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of Cyborg, or the threat of any of the foregoing.

8.3 Updates to Terms. Cyborg may update or modify these Terms at any time, and Cyborg shall provide reasonable notice to Customer of any such updates or modifications. Such notice may be provided via a posting on Cyborg's website, and Customer should frequently review Cyborg's website to check for updates to these Terms. By continuing to use the Content and/or Content Platform after Cyborg has provided such notice, Customer agree to be bound by such updated version of these Terms.

8.4 Notices. All notices or other communications required under these Terms shall be given in writing: to Cyborg to its applicable address set forth in the introductory paragraph of these Terms as the same may be updated from time to time by Cyborg, or to Customer to its address on file with Cyborg, as follows: (a) by first class, registered or certified United States mail, return receipt requested and postage prepaid, (b) by over-night express courier, or (c) by hand delivery to such addresses. Such notices shall be deemed to have been duly given (i) five (5) business days after the date of mailing as described above, (ii) one (1) business day after being received by an express courier during business hours, or (iii) the same day if by hand delivery. In addition, Cyborg may provide any notices or other communications to Customer electronically via Customer's email address on file with Cyborg.

8.5 Survival. The rights and obligations of the parties which by their nature must survive termination or expiration of these Terms shall survive in perpetuity any such termination or expiration, including the rights and obligations set forth in Section 3, Section 4, Section 6, Section 7, and Section 8.

8.6 Publicity. Customer hereby authorizes Cyborg to identify Customer as a customer of Cyborg on Cyborg's website and in Cyborg's other marketing and promotional materials.